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EXAMINER

DAUERMAN, S

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

04/14/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/415,285

Applicant(s)

Schafer et al.

Examiner

Sherry Dauerman

Group Art Unit

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☒ Responsive to communication(s) filed on Information Disclosure Citation filed on January 10, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☒ received in Application No. (Series Code/Serial Number) 09/244,184.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Specification***

1. The abstract is objected to because of the following informalities: the term “comprisingabsorbant” should be amended to include a space between words.
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not provide support for “a shrink foil which shrinks in a temperature range of about 70 degrees Celsius to 90 degrees Celsius” (claim 3, line 2).

### ***Claim Objections***

3. Claim objected to because of the following informalities: the term “comprisinga” should be amended to include a space between words. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. In claim 1, the term “joined with it” (line 3) is unclear as to what is joined together and how it is joined together. For the purposes of examination the term was interpreted to mean that the absorbent inner layer (2) was joined to the inner side of the impermeable foil (1).

In claim 1, the term “in a form” (line 4) which immediately precedes “selected from the group” (line 4) is unclear as to the limitation which is intended for selection. For the purposes of examination the term was interpreted as if the term “in a form” was deleted from the limitation.

In claim 7, the term “on its outer side” (line 1) is unclear as to what object the outer side is on and which outer side is being disclosed. For the purposes of examination the term was interpreted to mean on the outer side of the casing (1).

In claim 8, the term “polyethylene foil allocated to the inner side of the casing” (line 3) is unclear as to what is the relationship between polyethylene foil and the inner side of the casing. For the purposes of examination the term was interpreted to mean polyethylene foil adjacent to the inner side.

In claim 10, lines 1-3 the phrase “the foodstuffs are selected from the group consisting of sausages to be cooked or simmered” does not clearly state the limitation of the product. For the purposes of examination, the phrase has been interpreted to mean the group consisting of cooked sausages and simmered sausages.

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***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of co-pending Application No. 09/244,184 in view of EP0408164 A2, Juhl et al. (Pat. 5,382,391), Vicik (Pat. 5,698,278), and Caggiano (Pat. 4,861,632). The co-pending Application 09/244,184 claims a food barrier casing for food stuffs to be boiled, cooked or otherwise heated in the casing, wherein the casing comprises an impermeable foil which has an absorbent inner layer joined to the inner side of the impermeable foil, wherein in the inner layer is selected from the group consisting of individual fibers, woven fibers, fabric, knits, and fleece, wherein the inner layer is impregnated with coloring and/or flavoring agents, the casing is coated with the absorbent inner layer to form a laminate, the inner layer is joined with the adjacent layer of the casing by an adhesive, and wherein the

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foodstuffs are selected from a group consisting of cooked sausages, simmered sausages, pickled products, and soft cheeses.

The claims of co-pending Application No. 09/244,184 do not include the limitations of a casing which comprises at least one steam and/or gas impermeable foil, wherein the casing comprises a shrink foil which shrinks in a temperature range of about 70 - 90 degrees Celsius, wherein the casing comprises two polyethylene foils and a polyamide foil between them and the polyethylene foil adjacent to the inner side of the casing is extruded on wet and functions as an adhesive for the absorbent inner layer, wherein the outer side of the casing comprises at least one tight plastic foil joined together so as to be flat, and wherein the casing has the shape of a bag and an excess length at its open end, said excess length being made without an absorbent inner layer and comprising a heat-sealable plastic foil.

EP0408164 A2 teaches a food barrier casing for food stuffs to be boiled, cooked, or otherwise heated in the casing (page 3, lines 49-52), wherein the casing comprises at least one gas impermeable foil, wherein the outer side of the casing comprises at least one tight plastic foil joined together (page 2, lines 37-44) which forms a flat bag (figure 2) for the purposes of providing a strong casing for foods, such as sausage, wherein the casing is impregnated with flavoring so that the overall processing of the food stuff will be simplified by combining the cooking and spicing steps.

Juhl et al. teaches a casing formed from an extruded multilayer blend of thermoplastics (col. 3, lines 55-58) that comprises an oxygen barrier type foil, wherein the casing comprises a

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shrink foil (col. 7, lines 8-11), wherein the inner layer is joined with the adjacent layer of the casing by an adhesive (col. 7, line 43-46), the foil being selected from the group consisting of polyethylene (col. 4, lines 24-27) and poly amide (col. 5, lines 10-15) foil, wherein the casing is a multilayer foil which may consist of 1- 5 layers (col. 7, lines 39-41) comprise polyethylene foils (col. 4, lines 24-27) and a polyamide foil (col. 5, lines 19-24) between them, wherein the casing has the shape of a bag (col. 9, line 63 - col. 10, line 1) and wherein the lengths of foil are heat sealed to each other at the top end and/or the edges (col. 9, line 65 - col. 10, line 9) for the purposes of producing an easy to manufacture an oxygen barrier foodstuffs bag which can be tightly sealed to prevent leakage and to enclose flavors within the bag that are transferred directly to the food stuff contained within.

With respect to claim 8, the limitation wherein the polyethylene foil adjacent to the inner side of the casing is extruded on wet and functions as an adhesive for the absorbent inner layer, and wherein the casing has the shape of a bag and an excess length at its open end, said excess length being made without an absorbent inner layer and comprising a heat sealable plastic foil, one skilled in the art would be knowledgeable of the use of polyethylene for extrusion lamination where polyethylene is provided as a hot melt adhesive provides bonding between the layers in contact with the adhesive layer.

Vicik (Pat. 5,698,278) teaches a food casing which comprises an extruded multilayer heat shrinkable film, wherein it is known provide a casing comprising at least one steam and/or gas impermeable foil (col. 1, lines 13-21).

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Caggiano (Pat. 4,861,632) teaches a laminated bag wherein the peripheral edges of the outer and inner sheets extend beyond the absorbent layer (4) (Fig.3) and wherein the extended lengths of foil are heat sealed to each other (col. 4, lines 57-61) for the purpose of providing sturdy seal which encloses the absorbent layer along with the products to be kept dry therein.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the casing for foodstuffs as claimed in the co-pending Application No. 09/244,184 such that the casing comprises at least one steam and/or gas impermeable foil, a shrink foil which shrinks in a temperature range of about 70 - 90 degrees Celsius, two polyethylene foils and a polyamide foil between them and the polyethylene foil adjacent to the inner side of the casing which is extruded on wet and functions as an adhesive for the absorbent inner layer, wherein the outer side of the casing comprises at least one tight plastic foil joined together so as to be flat, and wherein the casing has the shape of a bag and an excess length at its open end, said excess length being made without an absorbent inner layer and comprising a heat-sealable plastic foil as per the teachings of EP0408164 A2, Juhl et al. (Pat. 5,382,391), Vicik (Pat. 5,698,278), and Caggiano (Pat. 4,861,632) in order to produce a sturdy multilayer sealed bag which preserves the quality the foodstuff contained by preventing leakage of gas and moisture from within and contains an inner layer comprising a flavor and color which can be transferred directly to the food stuff during the cooking process and simplifying the food preparation process.

This is a provisional obviousness-type double patenting rejection.



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***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP0408164 A2. in view of Juhl et al. (Pat. 5,382,391) and Vicik (Pat. 5,698,278). EP0408164 A2 teaches a food barrier casing for food stuffs to be boiled, cooked, or otherwise heated in the casing (page 3, lines 49-52), wherein the casing comprises at least one gas impermeable foil, an absorbent inner layer joined to the inner side of the impermeable foil (page 3, lines 26-28), wherein in the inner layer is selected from the group consisting of individual fibers, woven fibers, fabric, knits, and fleece (page 2, lines 5-6 and 10-11), wherein the inner layer is impregnated with coloring and/or flavoring agents (page 3, lines 8-17), the casing is coated with the absorbent inner layer to form a laminate (figure 1), wherein the outer side of the casing comprises at least one tight plastic foil joined together (page 2, lines 37-44) so as to be flat (figure 2), and wherein the foodstuffs are selected from a group consisting of cooked sausages, simmered sausages, pickled products, and soft cheeses (page 3, lines 49-52) for the purposes of providing a strong casing for foods, such as sausage, wherein the casing is impregnated with flavoring so that the overall processing of the food stuff will be simplified by combining the cooking and spicing steps.

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EP0408164 A2 fails to teach a casing which comprises at least one steam and/or gas impermeable foil, wherein the casing comprises a shrink foil which shrinks in a temperature range of about 70 - 90 degrees Celsius, wherein the inner layer is joined with the adjacent layer of the casing by an adhesive, the adhesive comprises extruded polyethylene, the foil being selected from the group consisting of polyethylene and poly amide foil, and wherein the casing comprises two polyethylene foils and a polyamide foil between them.

Juhl et al. teaches a casing formed from an extruded multilayer blend of thermoplastics (col. 3, lines 55-58) that comprises an oxygen barrier type foil, wherein the casing comprises a shrink foil (col. 7, lines 8-11), wherein the inner layer is joined with the adjacent layer of the casing by an adhesive (col. 7, line 43-46), the foil being selected from the group consisting of polyethylene (col. 4, lines 24-27) and poly amide (col. 5, lines 10-15) foil, wherein the casing is a multilayer foil which may consist of 1- 5 layers (col. 7, lines 39-41) comprise polyethylene foils (col. 4, lines 24-27) and a polyamide foil (col. 5, lines 19-24) between them, wherein the inner film lining which absorbed a modifier (col. 6, line 64 - col. 7, line 4) which is a flavor (col. 6, lines 8-11) or a colorant (col. 6, lines 12-15) for the purposes of providing a casing which acts as an oxygen barrier and contains an inner layer comprising a modifier such as flavors which can be transferred directly to the food stuff contained within the casing.

With respect to claim 3, wherein the barrier casing comprises a shrink foil which shrinks in a temperature of about 70-90 degrees Celsius, one skilled in the art would expect that a multilayer

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heat shrinkable thermoplastic which comprises polyethylene and polyamide would have a heat temperature which falls within the range of about 70-90 degrees Celsius.

With respect to claim 6, wherein the adhesive was extruded polyethylene, although Juhl et al. (Pat. 5,382,391) specified vinylidene chloride copolymer as the extruded adhesive which also serves as a barrier layer (col. 7, lines 43-46), it is known to those of ordinary skill in the art that extruded polyethylene functions as an adhesive layer and a barrier layer in the production of multilayer films.

With respect to claim 8, the limitation wherein the polyethylene foil adjacent to the inner side of the casing is extruded on wet and functions as an adhesive for the absorbent inner layer, and wherein the casing has the shape of a bag and an excess length at its open end, said excess length being made without an absorbent inner layer and comprising a heat sealable plastic foil, one skilled in the art would be knowledgeable of the use of polyethylene for extrusion lamination where polyethylene is provided as a hot melt adhesive provides bonding between the layers in contact with the adhesive layer.

Vicik (Pat. 5,698,278) teaches a food casing which comprises an extruded multilayer heat shrinkable film, wherein it is known provide a casing comprising at least one steam and/or gas impermeable foil (col. 1, lines 13-21).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the casing for foodstuffs of EP0408164 A2 such that the casing comprises at least one steam and/or gas impermeable foil, wherein the casing comprises a shrink

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foil which shrinks in a temperature range of about 70 - 90 degrees Celsius, wherein the inner layer is joined with the adjacent layer of the casing by an adhesive, the adhesive comprises extruded polyethylene, the foil being selected from the group consisting of polyethylene and poly amide foil, and wherein the casing comprises two polyethylene foils and a polyamide foil between them as per the teachings of Juhl et al. and Vicik in order to for the purposes of providing a strong tight fitting casing which preserves the foods enclosed within and simplifies the cooking and spicing steps by combining flavoring and coloring modifiers with the absorbent inner lining.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP0408164 A2. in view of Juhl et al. (Pat. 5,382,391) and Vicik (Pat. 5,698,278) as applied to claims 1, 3-7, and 10 above, and further in view of Siebrecht et al. (Pat. 5,043,194). EP0408164 A2 in view of Juhl et al. as applied above fails to teach wherein the inner layer comprises fibers selected from the group consisting of cotton fibers, cellulose fibers, regenerated cellulose fibers, and mixtures thereof.

Siebrecht et al. (Pat. 5,043,194) teaches a tubular packaging casing which contains an inner cellulose layer (col. 1, line 68 - col. 2, line 3) for the purpose of enclosing a food product.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the casing for foodstuffs of EP0408164 A2 such that the inner lining comprised of a fiber material selected from the group of cotton fibers, cellulose, regenerated cellulose, viscose and mixtures as per the teachings of Juhl et al. (Pat. 5,382,391), Vicik (Pat.

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5,698,278), and Siebrecht et al. (Pat. 5,043,194) in order to securely enclose a food product in a known casing material.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP0408164 A2 in view of Juhl et al. (Pat. 5,382,391) and Vicik (Pat. 5,698,278) as applied to claims 1, 3-7, and 10 above, and further in view of Caggiano (Pat. 4,861,632). EP0408164 A2. in view of Juhl et al. and Vicik fails to teach wherein the casing has the shape of a bag and an excess length at its open end, said excess length being made without an absorbent inner layer and comprising a heat sealable plastic foil.

Juhl et al. (Pat. 5,382,391) teaches wherein the casing has the shape of a bag (col. 9, line 63 - col. 10, line 1) and wherein the lengths of foil are heat sealed to each other at the top end and/or the edges (col. 9, line 65 - col. 10, line 9) for the purpose of producing a sturdy and tightly sealed bag which is easy to manufacture and will not experience leakage.

Caggiano (Pat. 4,861,632) teaches a laminated bag wherein the peripheral edges of the outer and inner sheets extend beyond the absorbent layer (4) (Fig.3) and wherein the extended lengths of foil are heat sealed to each other (col. 4, lines 57-61) for the purpose of providing sturdy seal which encloses the absorbent layer along with the products to be kept dry therein.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the casing for foodstuffs of EP0408164 A2 such that the casing has the shape of a bag and an excess length at its open end, said excess length being made without

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an absorbent inner layer and comprising a heat sealable plastic foil as per the teachings of Juhl et al. (Pat. 5,382,391), Vicik (Pat. 5,698,278), and Caggiano (Pat. 4,861,632) in order to the purpose of producing a sturdy and tightly sealed bag which is easy to manufacture, will not experience leakage and encloses the absorbent layer along with the products to be kept dry therein.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Pat. 3,343,663, 9/1967, Seidler - discloses laminate pkg. film w/ PE adhesive

US Pat. 4,397,337, 8/1983, Porrmann et al. - discloses fiber-reinforced tubular cellulose casing

US Pat. 4,623,566, 11/1986, Kastl et al. - discloses fiber-reinf. O<sub>2</sub> barrier cellulose casing

US Pat. 4,940,614, 7/1990, Kastl et al. - discloses casing w/ longitudinal seal

US Pat. 5,419,962, 5/1995, Robertson et al. - discloses bonded fibrous casings

US Pat. 5,705,214, 1/1998, Ito et al. - discloses a casing w/ inner adhesive layer & spices

WO Pat. 9524835A1, 9/1995, Ito et al. - discloses a casing w/ inner adhesive layer & spices


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherry Dauerman at telephone number (703) 305-0883. The examiner can normally be reached on Monday - Friday from 7:30 a.m. - 4:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703) 308-0756. The fax phone numbers for the organization where this application is assigned are (703) 305-3599 and (703) 305-7718.

Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

**Sherry a. Dauerman**  
**Patent Examiner**  
**Art Unit 1761**  
April 12, 2000

  
**MILTON CANO**  
**PRIMARY EXAMINER**

*GAU 1761*

*4/13/00*